255 Mulberry St.
Rochester, NY 14620
September 29, 1993

William Johnson, Executive Director
Urban League of Rochester
265 North Clinton Ave.
Rochester, NY 14605

Dear Bill:

Thank you for coming to the "Health Reform Watch Party" last Wednesday, September 22, 1993. It was good to get a chance to meet you and to reflect, even briefly, on the possibility of health reform in Rochester.

As a health law specialist at Greater Upstate Law Project, I advocate for the rights of poor people throughout Monroe County and upstate New York. Fran Weisberg, who works with GULP and Monroe County Legal Assistance Corporation as a health specialist, and I would be more than happy to meet to discuss the impact of health reform on poor people in Rochester, New York, and the concerns that we have, on behalf of our clients, about the direction in which the Griner Commission appears to be heading. If you are interested in meeting to discuss these issues, please give me or Fran a call at 454-6500.

I am writing to you now, however, in my capacity as attorney for the Gay Alliance of Genesee Valley [GAGV] in its property tax exemption case against Rochester, rather than as a legal services attorney, to ask you for your help. Specifically, we need your help in asking Mayor Ryan **either:** (1) to direct Corporation Counsel to withdraw the appeal; **or** (2) to direct Corporation Counsel to postpone the appeal proceedings until after you become Mayor so that you can then direct Corporation Counsel to settle this case and withdraw the appeal.

When we met last week, you mentioned that you agreed with us that it is in Rochester's best interests to comply with the Judge's Order rather than to use its time, money and staff to appeal the decision. However, the City Attorney's Office is nearly finished preparing its appeal documents in its appeal from Judge Siracuse's decision. For this reason, the sooner you can approach Mayor Ryan on this matter, if you are willing to do so, the better.

Let me give you some background. As you probably recall, in April 1993, Judge Siracuse found that the City had illegally discriminated against the Gay Alliance when it denied the GAGV a property tax exemption for its Center. After the decision was issued, City Councilman Gary Muldoon set up settlement discussions with Corporation Counsel Louis Kash, my co-counsel, and I, with Gary as mediator.

At our initial meeting in May, my co-counsel and I made it clear that the GAGV was willing to negotiate the amount of attorneys' fees, costs, and interest on retroactive taxes. We also assumed, and Lou Kash concurred, that if the parties entered into a settlement, the chances were good that Judge Siracuse would not go forward with the sanctions hearing against the City Corporation Counsel's Office.[1] Finally, we made it clear that the GAGV would not compromise on the issue of its entitlement to a full property tax exemption.

We met three times. At our third meeting, Lou Kash proposed, among other elements, a formula by which the GAGV would be given a 65% property tax exemption. It was clear from our discussions that Lou would not discuss a settlement that involved a 100% property tax exemption. Given this impasse in positions, we agreed that further discussions would be fruitless.

After our second meeting, Lou Kash visited the GAGV Center where he met Lloyd Gray, the current President. Lou mentioned to Lloyd that while he had told Mayor Ryan generally that we were engaged in negotiations, he had not really discussed the details of GAGV's proposal with the Mayor, and that the Mayor had left it up to Lou to make all decisions. I am relating this information to you because it is important that you know, when you talk to him, that Mayor Ryan may not know all that much about the details of our now-abandoned negotiations.

At this point, Corporation Counsel's Office has already prepared the Record on Appeal, and, unless Mayor Ryan directs otherwise, plans to file its Appeal Brief with the Appeals Court by October 8, 1993. We will then have to file the GAGV's Reply Brief by November 9, 1993, and the appeal will be argued before the Appeals Court on November 29, 1993. A decision will be issued within 6 to 8 weeks after then, in all likelihood after you are already Mayor.

Our immediate goal would be to have Mayor Ryan direct Lou Kash to withdraw the appeal altogether. He can do this at any time before the appeal is argued, but preferably a withdrawal will be immediate rather than later so that we do not have to devote extensive time and resources into writing our Reply Brief.

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[1] Judge Siracuse found that the Corporation's Counsel's Office was potentially liable for sanctions due to abuse of legal proceedings, and stated that he would be setting a hearing date on this issue. The sanctions proceedings were postponed automatically when the City filed its appeal.

However, to avoid the publicity that would undoubtedly ensue, and/or to avoid any internal political problems with Corporation Counsel's Office, Mayor Ryan may be reluctant to withdraw the appeal. Therefore, as an alternative, Mayor Ryan can direct Lou Kash simply not to file the City's Appeal Brief during his remaining tenure as Mayor. (Or, if the City's Appeal Brief is already filed by the time he agrees to this course, Mayor Ryan can direct Lou Kash to file a written agreement with the Appeals Court to postpone oral argument until after you are sworn in as Mayor.) After you are sworn in as Mayor, you can then withdraw the City's appeal altogether.

It can be emphasized to Mayor Ryan that delaying the filing of the City's Appeal Brief (or agreeing to postpone oral argument) will not legally prejudice the City's appeal rights in any manner. This is because the Appeals Court has a rule that provides that an appeal will **not** be dismissed if the appellant -- in this case, the City -- does not file its Appeal Brief **unless** nine months have passed since the appellant filed its Notice of Appeal. In this case, the City filed its Notice of Appeal on May 11, 1993. Therefore, the City's Appeal Brief can be filed at any time until February 10, 1994 without prejudicing the City's right to go forward on the appeal.

From the GAGV's current standpoint, the difficulty with effectuating this scenario is that it depends on political action. I cannot approach the Mayor directly because I am ethically obligated to talk only with the City's attorney. The GAGV wrote a letter to Mayor Ryan asking him to withdraw the appeal a few months ago, but the GAGV has not received a response.

Therefore, if you are willing to get involved, anything you can do to talk to Mayor Ryan to persuade him to drop or delay the City's Appeal in the GAGV case would be greatly appreciated. As I mentioned earlier, the sooner the City acts the better. Unless the City's appeal is withdrawn or postponed immediately, we will be compelled to write and file our Reply Brief, costing us many unnecessary hours and potentially costing the City thousands of dollars more in attorneys' fees.

Thank you very much for considering this request, and for any efforts you take on behalf of the GAGV. If you would like to discuss this matter further, please feel free to call me at my office at 454-6500, or at home at 256-0508. I will be out of the office on Thursday, September 30th, but will be in on Friday, October 1st.

For your information, I have enclosed a copy of Judge Siracuse's decision, the City's final settlement offer to the GAGV, Lou Kash's last letter of July 29, 1993 to me, and my last letter of August 4, 1993 to Lou Kash.

Again, thanks very much for your help. I know this is a particularly busy time for you, and we greatly appreciate your interest and willingness to help us out. I look forward to your tenure as Mayor, and to hearing from you further on this matter, as well as on health care policy issues in the City of Rochester.

Very truly yours,

Ellen M. Yacknin, Esq.

cc: Lloyd Gray, President
John Roberts